

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GROVER L. BATTLE, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 03-1062
	)	
JACKIE MARQUARDT, Record	)	Judge Ambrose
Supervisor, KEVIN FUTATO,	)	Magistrate Judge Hay
Records Specialist,	)	
ROBERT A. GREEVY,	)	
Assistant Counsel,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

Presently before this Court are two renewed motions for the appointment of counsel (Docket Nos. 51 & 57) filed by plaintiff, which require the Court to determine whether or not, under the facts and circumstances of this case, the Court should exercise its discretion pursuant to 28 U.S.C. § 1915(e)(1) and request an attorney to represent plaintiff in the prosecution of this action.

The plaintiff, Grover L. Battle, Jr., an inmate at the State Regional Correctional Facility at Mercer, has presented a civil rights complaint which he has been granted leave to prosecute without prepayment of costs against Records Supervisor Jackie Marquardt, Records Specialist Kevin Futato and Assistant Counsel Robert A. Greevy. In his complaint, plaintiff alleges that he has served his sentence in full and that defendants have conspired to keep him incarcerated past his maximum sentence. These facts are said to state a cause of action under the

provisions of 42 U.S.C. § 1983.

These are plaintiff's third and fourth requests for the appointment of counsel. He first petitioned this Court for the appointment of counsel on May 4, 2004 (Docket No. 25). In a Memorandum and Order dated May 11, 2004 (Docket No. 26), plaintiff's request was denied. Plaintiff's second motion for the appointment of counsel was filed on June 22, 2005, and denied in a Memorandum Order dated June 27, 2005. Plaintiff has now filed two new requests for counsel both of which were filed on September 16, 2005 (Docket Nos. 51, 57). It does not appear, however, that plaintiff is adding any new averments to those set forth in his previous petition.

Therefore, for the reasons set forth in the Court's Memorandum and Order dated May 11, 2004, and because consideration of the factors set forth in Parham v. Johnson, 126 F.3d 454, 457 (3d Cir. 1997), does not warrant the appointment of counsel in this instance, we decline to exercise our discretion to appoint counsel for plaintiff in the prosecution of this action. See Tabron v. Grace, 6 F.3d 147 (3d Cir. 1993).

An appropriate Order will be entered.

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JACKIE MARQUARDT, Record	)	
Supervisor, KEVIN FUTATO,	)	
Records Specialist,	)	
ROBERT A. GREEVY,	)	
Assistant Counsel,	)	
	)	
Defendants.	)	

ORDER

AND NOW, this 4th day of October, 2005,

IT IS ORDERED that plaintiff's renewed requests for the appointment of counsel (Docket Nos. 51, 57) are hereby DENIED without prejudice.

IT IS FURTHER ORDERED that if plaintiff desires review of this Order by the District Judge to whom this case is assigned he must, within ten (10) days of this date, file an application with the Clerk of Court. Failure to do so will waive the right to appeal. Siers v. Morrash, 700 F.2d 113 (3d Cir. 1983).

By the Court,

/s/ Amy Reynolds Hay  
AMY REYNOLDS HAY  
United States Magistrate Judge

cc: Grover L. Battle, Jr.  
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